IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 1451 OF 2005

Smt. Leena Jaykumar ..Petitioner.

Versus

Municipal Corporation of
Brihanmumbai & 2 Ors. ..Respondents.

Mr. L. A. Kriplani for the .
Mr. U. J. Makhija with Ms. P. A. Purandare for Respondent Nos.1 and 3.

CORAM: DALVEER BHANDARI, C.J. &
S.J. VAZIFDAR, J.
DATE : 13TH JULY, 2005

P.C.

Respondent No.2 is the state of Maharashtra. Respondent No.3 is the Municipal Commissioner for greater Mumbai.

2. The Petitioner has sought a Writ of Mandamus directing the Respondents not to remove an illuminated hoarding put up by her firm on the Respondents site. The Petitioner has also impugned a notice of termination dated the 11th November 2002 issued by the Respondents, terminating the allotment of the said site in favour of the Petitioner. The Petitioner has also challenged certain guidelines

issued by the Respondents.

3. Respondent No.1 by its letter dated the 21st November 2001 accepted the Petitioners' tender and awarded her the right to display advertisement hoardings for a period of two years , from 1st January 2002 to 31st December 2003. The charges were fixed at Rs 17,50,000 per annum. Clauses 14 and 18 of the tender form, which form a part of the contract read as under: --

> "14. The license shall be for a period of only two years from the date of allotment."
>
> "18. On termination of the rights of display, either on account of expiry of the period for which the rights are given or on account of failure on the part of the licensee to observe any of the conditions, the licensee shall immediately remove the hoardings/advertisement sites and give vacant and peaceful possession of the sites, failing which it shall be lawful for the Commissioner or any person authorised by him to take possession of the said Municipal sites at the risk and cost of the licensee."

4. Admittedly therefore, the contract had come to an end by efflux of time on 31st December 2003. Despite the same Petitioner, who is in arrears of over Rs.1 crore, has continued to

occupy the site without payment of any amount after the contract came to an end by efflux of time.

5. An affidavit in reply has been filed on behalf of Respondent No.1. The Petitioner has not filed any rejoinder to the same. In any event, we see no reason to disbelieve what is stated in the said affidavit in reply. The Petitioner has admittedly not paid any occupancy charge for the period 1st January, 2003 onwards. The Petitioner is thus in arrears of Rs.44,89,400 towards arrears of occupancy charges and advertisement fees for the period 1st January 2003 to 30th June 2005. The Petitioner is also in arrears of assessment tax amounting to Rs.52,07,821. The Petitioner is thus indebted to the Respondents for a sum of over Rs.1,00,00,000 to date.

6. It is indeed a travesty of justice , that the Petitioner despite being indebted to the Respondents in the sum of over Rs.1 crore continues to occupy the Respondents site without payment of a single rupee. To say the least the justification pleaded by the Petitioner for being entitled to do so is unsustainable. Mr. Kriplani, the learned

counsel appearing on behalf of the Petitioner, stated that the first Respondent by a letter dated the 11th November 2002, wrongly terminated the aforesaid contract. He further stated that the first Respondent wrongly contended that the Petitioner had illegally displayed advertisements at the said site. He stated that the first Respondent represented to various people, including the Petitioners customers that the Petitioner was placing advertisements on the site in contravention of law. In view of the same, he stated, the Petitioner' sclients did not enter into any contracts with the Petitioner for displaying their advertisements at the said site. The Petitioner thereby suffered damages . Mr Kriplani , submitted that in view thereof , the Petitioner was entitled in law to exercise a lien upon the said site, enabling her to utilise the same to make good the said , alleged losses suffered by her.

7. Even assuming that the first Respondents termination of the said agreement, by the letter dated 11th November 2002 was wrongful, the Petitioner is not entitled to claim possession of or to occupy the site. The agreement has admittedly come to an end by

efflux of time. Thus, even assuming that the termination was wrongful the Petitioner is not entitled to claim possession of or to occupy the site. The Petitioners' right, if any, is to claim damages, which in fact , she has by filing a suit in this court which we shall refer to shortly.

8 (a). It is pertinent at this stage to refer to two suits filed by the Petitioner. The first suit , being Long Cause Suit No 6941 of 2002, was filed in December 2002 in the Bombay City Civil Court at Bombay. In that suit , the Petitioner sought a declaration that the said notice dated 11th November 2002 is illegal and liable to be set aside for an injunction restraining the Respondents from acting upon the said notice and interfering with the displaying of advertisements at the site as per the contract by the Petitioner and for a mandatory order directing the Respondents to receive occupancy charges for the period 1st January 2003 to 31st of December 2003.

8 (b). The Petitioner thereafter took out a Chamber Summons , being Chamber Summons No.498 of 2005 to amend the plaint. In the amended plaint the Petitioner sought an injunction directing the first Respondent to grant her permission to utilise the

said site for such further period or periods, so as to enable her to recover the alleged losses and damages sustained by her on account of the aforesaid alleged breaches on the part of Respondents No. 1. We were informed that an interim injunction was granted on 24th December 2002, restraining the Respondents from disturbing the Petitioners possession of the said site and that the order is still in force. If what is stated in the petition is correct, the first Respondents lethargy in prosecuting the interlocutory proceedings taken out in the suit is indeed unfortunate. We are unable to understand on what principle of law such an injunction, at least beyond the period of the contract can ever be granted. Further the Petitioner having adopted the said proceedings is not entitled to maintain this petition. It amounts to multiplicity of proceedings.

9. The Petitioner also filed a suit in this court, being Suit No. 3545 of 2004 for damages against the first Respondent for the sum of Rs.1 crore based on the same allegations and on the same cause of action pleaded in this petition. Even if we were impressed with the merits of the Petitioners case, which we quite clearly are not, we

would have declined to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India in view of the Petitioner having filed the aforesaid suits. We are unable to understand the purpose of this Writ Petition in view of the aforesaid proceedings having already been adopted by the Petitioner.

10. The argument is that the remedy sought in this Writ Petition is wider. It is not. Most of the reliefs have been claimed in the two suits. Even otherwise, on facts, we see no merits in the Petition. The Petitioners' possession of the site, atleast after the expiry of the contractual period, is unjust and in gross violation of law and the contractual provisions. The learned Judge of the City Civil Court is requested to dispose of the Notice of Motion filed in the said suit as expeditiously as possible.

11. In the circumstances, the petition is dismissed. The Petitioner shall pay the costs of this petition , fixed at Rs.10,000 to Respondent No.1 within four weeks from today.

CHIEF JUSTICE

S.J. VAZIFDAR, J.